

WaiversFirst Name	Last Name	Claim Number
[REDACTED]	W-14-0013	
Amount	OGC Received Date	Assigned To Assigned Date
\$13714.98	08/25/2014	Richard Feldman 08/26/2014
EPA Decision	EPA Decision Date	Amount Approved Status
APPROVED	09/30/2014	\$13611.08 CLOSED
Appeal	Comments	
No	[REDACTED],	

This is in response to the request for waiver filed with this office on August 25, 2014. For the reasons set forth herein, your request for waiver is approved.

By copy of this e-mail, the Agency is instructed to make any corrective pay actions which may be necessary, including refunding any amount Mr. Protzmann paid on this debt. The Office of the Chief Financial Officer should ensure the accuracy of [REDACTED] pay records in coordination with the Interior Business Center (IBC), which replaced the Defense Finance and Accounting Services (DFAS) as the payroll service provider for the Agency. Finally, in addition to the IBC, OCFO should notify DFAS of the waiver decision, if appropriate.

Decision

I understand that you [REDACTED]. After you retired from military service, you worked for a private company, and were subsequently hired by EPA in 2008. For the purposes of calculating leave accrual, apart from certain exceptions that do not apply here, military retirees may only receive credit for active duty service during a war or in a campaign or expedition for which a campaign badge has been authorized. See 5 U.S.C. § 6303. In your case, your service computation date (SCD) should have reflected only your service in [REDACTED]. Nevertheless, the Agency erroneously set your SCD to include all twenty years of your military service. As a result, when you were hired by EPA, your annual leave accrual rate was established at 8 hours per pay period. The debt occurred because you should have received only 4 hours of annual leave at the start of your federal employment, and 6 hours beginning in your third year of federal employment. Thus, you were over-credited leave from August 31, 2008 until the error was discovered and your SCD was adjusted on April 16, 2014.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United

States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. In cases involving erroneously credited annual leave, an erroneous payment has occurred only if reconstruction of the employee's leave account to correct the crediting error produces a negative leave balance for any given leave year. See B-229409, Nov. 22, 1988. Because an employee with a negative leave balance has been paid for absences not covered by leave, he is indebted for the pay, and that indebtedness may be considered for waiver under 5 U.S.C. § 5584. By contrast, if reconstruction of the employee's leave account reveals a positive leave balance in any given leave year, then there has been no overpayment capable of waiver as the error is susceptible to correction through a reduction of the employee's positive leave balance. See B-229409, Nov. 22, 1988.

In your case, the DFAS reconstructed your annual leave account for each of the years at issue to determine whether you would have had a negative leave balance if Agency had correctly credited your leave. Based on the calculation DFAS made available to us at this time, you used more leave than would have properly accrued in each of the leave years 2009, 2010, and 2013. Accordingly, there is a negative leave balance for those leave years, resulting in a debt of \$3,708.12 for 2009, \$6,200.00 for 2010, and \$3,702.96 for 2013, for a grand total of \$13,611.08. I may consider the overpayment made to you during those leave years for waiver. See 5 U.S.C. § 5584. For all of the other years at issue, there is no debt.

Waiver is precluded if the employee is aware or should have been aware that he/she was being overpaid. See B-271308, April 18, 1996. In the present case, I find that the erroneous payment was caused by administrative error. Therefore, the only issue before me is whether you should have known that you were over-accruing annual leave. I find that your reliance on the Agency to place you in the correct leave earning category in this instance was reasonable. Most employees cannot reasonably be expected to know the details regarding the years of service calculation, and in particular how military service is credited toward the SCD. Moreover, there is no indication that your leave and earnings statement would have disclosed the erroneous leave accrual since the error began with your initial statement and remained erroneous throughout your entire period of employment with the Agency. Accordingly, all criteria for waiver of this claim have been met and this request for waiver is approved.

Richard Feldman
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Type
Incorrect Annual Leave Accrual

Attachments